

includes a condition in which the housing or services are not in the most integrated setting appropriate to an individual's needs in accordance with the requirements of the Americans with Disabilities Act (42 U.S.C. 12101, *et seq.*), and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). (See 28 CFR part 35, appendix B, addressing 25 CFR 35.130.) Participation in "housing programs serving specified populations" as defined in this section does not present a fair housing issue of segregation, provided that such programs are administered to comply with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4) (Nondiscrimination in Federally Assisted Programs); The Fair Housing Act (42 U.S.C. 3601-19), including the duty to affirmatively further fair housing; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); the Americans with Disabilities Act (42 U.S.C. 12101, *et seq.*); and other Federal civil rights statutes and regulations.

Significant disparities in access to opportunity means substantial and measurable differences in access to educational, transportation, economic, and other important opportunities in a community, based on protected class related to housing.

§ 5.154 Assessment of Fair Housing (AFH).

(a) *General.* To develop a successful affirmatively furthering fair housing strategy, it is central to assess the elements and factors that cause, increase, contribute to, maintain, or perpetuate segregation, racially or ethnically concentrated areas of poverty, significant disparities in access to opportunity, and disproportionate housing needs. For HUD program participants already required to develop plans for effective uses of HUD funds consistent with the statutory requirements and goals governing such funds, an AFH will be integrated into such plans.

(b) *Requirement to submit an AFH.* In furtherance of the statutory obligation to affirmatively further fair housing, an AFH must be developed following the AFH consultation, content, and submission requirements described in §§ 5.150 through 5.180, and submitted in a manner and form prescribed by HUD by the following entities:

(1) Jurisdictions and Insular Areas that are required to submit consolidated plans for the following programs:

(i) The Community Development Block Grant (CDBG) program (see 24 CFR part 570, subparts D and I);

(ii) The Emergency Solutions Grants (ESG) program (see 24 CFR part 576);

(iii) The HOME Investment Partnerships (HOME) program (see 24 CFR part 92); and

(iv) The Housing Opportunities for Persons With AIDS (HOPWA) program (see 24 CFR part 574).

(2) Public housing agencies (PHAs) receiving assistance under sections 8 or 9 of the United States Housing Act of 1937 (42 U.S.C. 1437f or 42 U.S.C. 1437g).

(c) *Fair housing data.* Program participants will use HUD-provided data, as defined within the definition of "data" in § 5.152, and supplement the HUD-provided data, as needed, with local data and local knowledge, as guided by the Assessment Tool.

(d) *Content.* Using the Assessment Tool prescribed by HUD, each program participant shall conduct an AFH for the purpose of examining its programs, jurisdiction, and region, and identifying goals to affirmatively further fair housing and to inform fair housing strategies in the consolidated plan, annual action plan, the PHA Plan and any other plan incorporated therein, and community plans including, but not limited to, education, transportation, or environmental related plans. The AFH's analysis, goals, and priorities will address integration and segregation; racially or ethnically concentrated areas of poverty; disparities in access to opportunity; and disproportionate housing needs based on race, color, religion, sex, familial status, national origin, and disability. The AFH will assess the jurisdiction's fair housing enforcement and fair housing outreach capacity. At a minimum, the AFH will include the following elements:

(1) *Summary of fair housing issues and capacity.* The AFH must include a summary of fair housing issues in the jurisdiction, including any findings, lawsuits, enforcement actions, settlements, or judgments related to fair housing or other civil rights laws, an assessment of compliance with existing

fair housing laws and regulations, and an assessment of the jurisdiction's fair housing enforcement and fair housing outreach capacity.

(2) *Analysis of data.* Using HUD-provided data, local data, local knowledge, including information gained through community participation, and the Assessment Tool, the program participant will undertake the analysis required by this section. This analysis will address the following to the extent the data or local knowledge are informative of the following:

(i) Identification of integration and segregation patterns and trends based on race, color, religion, sex, familial status, national origin, and disability within the jurisdiction and region;

(ii) Identification of racially or ethnically concentrated areas of poverty within the jurisdiction and region;

(iii) Identification of significant disparities in access to opportunity for any protected class within the jurisdiction and region; and

(iv) Identification of disproportionate housing needs for any protected class within the jurisdiction and region.

(3) *Assessment of fair housing issues.* Using the Assessment Tool provided by HUD, the AFH will identify the contributing factors for segregation, racially or ethnically concentrated areas of poverty, disparities in access to opportunity, and disproportionate housing needs as identified under paragraph (d)(2) of this section.

(4) *Identification of fair housing priorities and goals.* Consistent with the identification of fair housing issues, and the analysis and assessment conducted under paragraphs (d)(1) through (3) of this section, the AFH must:

(i) Identify and discuss the fair housing issues arising from the assessment; and

(ii) Identify significant contributing factors, prioritize such factors, and justify the prioritization of the contributing factors that will be addressed in the program participant's fair housing goals. In prioritizing contributing factors, program participants shall give highest priority to those factors that limit or deny fair housing choice or access to opportunity, or negatively impact fair housing or civil rights compliance; and

(iii) Set goals for overcoming the effects of contributing factors as prioritized in accordance with paragraph (d)(4)(ii) of this section. For each goal, a program participant must identify one or more contributing factors that the goal is designed to address, describe how the goal relates to overcoming the identified contributing factor(s) and related fair housing issue(s), and identify the metrics and milestones for determining what fair housing results will be achieved. For instance, where segregation in a development or geographic area is determined to be a fair housing issue, with at least one significant contributing factor, HUD would expect the AFH to include one or more goals to reduce the segregation.

(5) *Strategies and actions.* To implement goals and priorities in an AFH, strategies and actions shall be included in program participants' consolidated plans, Annual Action Plans, and PHA Plans (including any plans incorporated therein), and need not be reflected in their AFH. Strategies and actions must affirmatively further fair housing and may include, but are not limited to, enhancing mobility strategies and encouraging development of new affordable housing in areas of opportunity, as well as place-based strategies to encourage community revitalization, including preservation of existing affordable housing, including HUD-assisted housing.

(6) *Summary of community participation.* The AFH must include a concise summary of the community participation process, public comments, and efforts made to broaden community participation in the development of the AFH; a summary of the comments, views, and recommendations, received in writing, or orally at public hearings, during the community participation process; and a summary of any comments, views, and recommendations not accepted by the program participant and the reasons for nonacceptance.

(7) *Review of progress achieved since submission of prior AFH.* For each AFH submitted after the first AFH submission, the program participant will provide a summary of progress achieved in meeting the goals and associated

metrics and milestones of the prior AFH, and identify any barriers that impeded or prevented achievement of goals.

§ 5.156 Joint and Regional AFHs.

(a) *General.* For the purposes of sharing resources and addressing fair housing issues from a broader perspective, program participants are encouraged to collaborate to conduct and submit a single AFH, either a joint AFH or regional AFH (as defined in § 5.152), for the purpose of evaluating fair housing issues and contributing factors.

(1) Collaborating program participants, whether joint participants or regionally collaborating participants, need not be located in contiguous jurisdictions and may cross State boundaries, provided that the collaborating program participants are located within the same Core Based Statistical Area (CBSA), as defined by the United States Office of Management and Budget (OMB) at the time of submission of the joint or regional AFH.

(2) Program participants, whether contiguous or noncontiguous, that are either not located within the same CBSA or that are not located within the same State and seek to collaborate on an AFH, must submit a written request to HUD for approval of the collaboration, stating why the collaboration is appropriate. The collaboration may proceed upon approval by HUD.

(3) Collaborating program participants must designate, through express written consent, one participant as the lead entity to oversee the submission of the joint or regional AFH on behalf of all collaborating program participants. When collaborating to submit a joint or regional AFH, program participants may divide work as they choose, but all program participants are accountable for the analysis and any joint goals and priorities, and each collaborating program participant must sign the AFH submitted to HUD. Collaborating program participants are also accountable for their individual analysis, goals, and priorities to be included in the collaborative AFH.

(4) Program participants that intend to prepare either a joint or regional AFH shall promptly notify HUD of

such intention and provide HUD with a copy of their written agreement.

(b) *Coordinating program years and submission deadlines.* (1) To the extent practicable, all collaborating program participants must be on the same program year and fiscal year (as applicable) before submission of the joint AFH or regional AFH. (See § 5.160 and 24 CFR 91.10 and 903.5.) The applicable procedures for changing consolidated plan program participant program year start dates, if necessary, are described in 24 CFR 91.10. The applicable procedures for changing PHA fiscal year beginning dates, if necessary, are described in 24 CFR part 903.

(2) If alignment of a program year or fiscal year is not practicable, the submission deadline for a joint AFH or regional AFH must be based on the designated lead entity's program year start date or fiscal year beginning date (as applicable), as provided in § 5.160(c). Within 12 months after the date of AFH acceptance, each collaborating program participant that has a program year start date, or fiscal year beginning date, earlier than the designated lead entity must make appropriate revisions to its full consolidated plan (as described in § 91.15(b)(2) of this chapter), or PHA Plan and any plan incorporated therein, to incorporate strategies and proposed actions consistent with the fair housing goals, issues, and other elements identified in the joint AFH or regional AFH.

(c) *Procedures for withdrawal from a joint or regional collaboration.* A program participant that, for any reason, decides to withdraw from a previously arranged collaborative AFH must promptly notify HUD of the withdrawal. HUD will work with the withdrawing program participant, as well as the remaining collaborative participants, to determine whether a new submission date is needed for the withdrawing participant or the remaining participants. If a new submission date is needed for the withdrawing participant or the remaining participants, HUD will establish a submission date that is as close as feasible to the originally intended submission date and is no later than the original joint or regional submission date unless good cause for an extension is shown.